

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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IN THE MATTER OF)	
)	
IMPLEMENTATION OF SECTION 302)	CS DOCKET 96-46
OF THE TELECOMMUNICATIONS)	SECOND REPORT AND
ACT OF 1996)	ORDER
)	
OPEN VIDEO SYSTEMS)	

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**PETITION FOR RECONSIDERATION
SECOND REPORT AND ORDER
OPEN VIDEO SYSTEMS
SUBMITTED BY
METROPOLITAN DADE COUNTY
DATED JULY 3, 1996**

Metropolitan Dade County respectfully submits this petition for reconsideration to the Federal Communications Commission ("Commission" or "FCC") in the above-captioned proceeding.

I. INTRODUCTION

The Telecommunications Act of 1996 (the "1996 Act") established a new framework for entry into the video programming delivery marketplace by open video systems ("OVS"). As such, the FCC has been directed to establish rules and regulations that provide the regulatory framework for the advancement of such services.

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On June 3, 1996, the Commission released a Second Report and Order (the "Order") implementing Section 302 of the Telecommunications Act of 1996. After analyzing the Order, Metropolitan Dade is concerned with several of the provisions governing OVS.

Specifically, the County requests that the Commission reconsider its rules regarding OVS to:

- prevent a 2/3 reduction in the franchise fee structure;
- prevent cable companies from switching to OVS;
- preserve favorable rules concerning Public, Educational and Governmental (PEG) channels;
- address consumer protection issues; and
- ensure that local government permission and authority has been granted as a precondition to the federal OVS certification process.

II. DISCUSSION

A. The Commission should revise its gross revenue fee definition to prevent a two-third reduction of franchise fees derived from OVS operators.

Congress directed the Commission to permit OVS to operate without a local franchise requirement in exchange for a fee. The Commission does not dispute that Congress enacted the cable franchise fee as the consideration in exchange for the right to use the public rights-of-ways. The FCC has stated in its Order that state and local authorities may impose conditions on an OVS operator for use of the public right-of-way, so long as such conditions are applied equally (i.e. are nondiscriminatory and competitively neutral). The Order also states that local authorities will retain their ability to address the following concerns: (1) coordination of construction schedules, (2) establishment of standards and procedures for constructing lines across private property, (3)

determination of insurance and indemnity requires, (4) establishment of rules for local building codes, (5) scheduling common trenching and street cuts, (6) repairing resurfacing construction-damaged streets, (7) ensuring public safety, and (8) keeping track of the various systems using the rights-of-way to prevent interference among facilities.

Dade County believes that the rules specific to the OVS gross revenue fee calculations are unfavorable in that they will create a risk of a two-thirds reduction in fees because they state that such fees are computed based on subscription fees paid directly to the OVS operator, and not on revenues derived from subscribers or advertisers that pay directly to a third party programmer. The proceeding item bears a great significance in fee computation between OVS and cable and therefore is a major concern to the County. This ruling could lead to claims of discrimination from existing cable operators to be released from cable franchises to the extent that OVS operators have lesser fiscal burdens.

The commission should reconsider its rules to provide OVS fiscal equity with existing cable franchise fee requirements.

B. The Commission should prevent cable companies from switching to OVS.

OVS systems were created by statute to create an environment of competition within the video marketplace. The FCC should not allow a current cable operator to "switch" to being an OVS operator and claim local cable franchising no longer applies. Although the FCC uses the effective competition test as a precondition for the allowance of a cable operator to convert to OVS, it is not adequate to ensure that consumers will be afforded the opportunity to really choose among providers. Congress did not intend for OVS to become a mechanism for the elimination of the cable franchising process.

C. Dade County urges the Commission to preserve its OVS rules regarding Public, Educational and Governmental (PEG) channels.

Dade County agrees that OVS rules regarding PEG are generally equivalent to those of the current cable operators and should be maintained.

D. The Commission should include provisions to protect consumers regarding OVS services.

The Commission has disregarded any consumer protection provisions within its rulemaking with the exception that OVS providers supply subscribers with programming information. The County would like consumer protection provisions included in the rulemaking or a clarification from the Commission as to what, if any, mechanism will be implemented to address consumer concerns regarding services provided by OVS providers. The County should be able to implement and enforce consumer protection provisions for its residents using OVS services. At a minimum, the Commission should require that an OVS provider supply local authorities with basic information regarding its policies pertaining to consumer redress at the local level as part of its application prior to receiving certification from the FCC.

E. The Commission should mandate that local government authority grant the use of right-of-way from the OVS provider prior to the FCC's acceptance of an application for certification.

The Commission should require that prior to FCC certification, an OVS operator obtain the consent of local government for use of the public rights-of-way and obtain the approval of local authorities regarding the manner in which Section 611 obligations (PEG) will be fulfilled.

III. Conclusion

Metropolitan Dade County respectfully requests the Commission to adopt a regulatory framework that is consistent with the comments submitted above.

Respectfully submitted

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